IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION.

WRIT PETITION NO. 8139 OF 2004 .

Rejas Ahmed. .. Petitioner.

V/s.

Anthony L. Fernandes & anr. ... Respondents.

Shri Rajiv Patil for the petitioner.

Shri V.V. Pai with Mrs. Bima R. Pai for the respondents.

CORAM : V.C.DAGA, J.

DATED : 29.9..2006.

P.C. :

. This petition is directed against the judgment and order dated 9.7.2004 passed by the Small Causes Court, Bombay, in Appeal No. 12/2002, thereby confirming the judgment and decree dated 23.7.2001 passed by the trial Court in RAE & R Suit No. 216/622 of 1986.

FACTS:

2. The petitioner is the original defendant against whom the suit is filed for eviction on the ground of arrears of rent and permanent alteration to the suit premises.

3. The trial Court after trial on evidence was pleased to hold that the Defendant was in arrears of

rent for the period of 6 months however, the trial Court did not find favour with the contention of the plaintiff that the defendant has erected permanent structure in the suit premises without consent of the landlord. The trial Court was also pleased to dismiss the prayer for recovery of arrears of rent.

4. The petitioner defendant had preferred an appeal to the Bench of the Court of Small Causes at Bombay and raised a ground that the petitioner was not in arrears of rent and had paid the rent of suit premises and that he has complied with requirement of law.

5. The Appellate Court considered the provisions of section 12(3)(a); and relying upon the reply to the notice given by the respondent-landlord; wherein the petitioner-tenant had contended that he had paid rent upto September 1984 but the respondent-plaintiff did not issue rent receipts for the same, held that the petitioner was in arrears of rent for period of six months. The appellate Court held that the respondent/plaintiff paid rent upto August 1984 and that he ought to have continued or pay or send rent to the plaintiff from Sept.1984 onwards or at least within 30 days after receipt of demand notice. It was, thus, held that petitioner-defendant having failed to do so; he was

in arrears of rent for more than 6 months and therefore, he was held to be defaulter.

6. Being aggrieved by the aforesaid judgment and order of the Division Bench of the Small Causes Court, petitioner-defendant has filed this petition under Article 227 of the Constitution of India.

7. Having heard rival parties, a few undisputed facts are required to be reiterated to appreciate the controversy and the concurrent findings of facts given by both the Courts below.

8. Relevant provisions of section 12 of the Bombay Rent Act reads as under:

> "Sec.12(1): A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of tenancy, in so far as they are consistent with the provisions of this Act."
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> "Sec.12(2): No suit for recovery of possession shall be instituted by a landlord against tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882."
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> "Sec. 12(3) Where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if such rent or increases are in

> arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in sub-section (2), the (Court shall pass a decree) for eviction in any such suit for recovery of possession."
>
> "(b) In any other case, no decree for eviction shall be passed in any such suit if, on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court regularly such rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the Court.

9. There is no dispute that the notice dated 18.3.1985 as contemplated under sub-section (2) was issued by the respondents claiming arrears of rent from 1.8.1981. There is again no dispute that the petitioner was originally licensee and was paying compensation at the rate of Rs. 50/- p.m. which was then treated as "Rent" after the amendment to the Bombay Rent Act w.e.f. February 1973. There is again no dispute that the petitioner received the notice on 21.3.1985 and replied to the same on 25.3.1985.

10. Petitioner himself admitted in the reply that he had made payment of rent till August 1984. Although the lower appellate Court found that the respondents failed to prove the arrears since August 1981 by drawing an adverse inference against them for non-production of relevant counterfoils from

August 1981, the petitioner as aforesaid, was in arrears of rent for six months or more, on his own showing viz. from 1.9.1984 to 18.3.1985 (i.e. September to Februrary) as on the date of the notice of demand. The petitioner failed and neglected to pay such arrears within one month from the date of receipt of the notice of demand nor did he file any application for determination of standard rent, although he made a vain attempt in the reply letter by disputing the quantum of rent of Rs. 50/- p.m., as exorbitant although the premises are commercial.

11. Thus, there is no error in the concurrent finding of fact that the petitioner was a defaulter within the meaning of section 12(3)(a) of the Bombay Rent Act and the Court was obliged to pass a decree of eviction.

12. Having said so, it is necessary to take note of the judgment of the Apex Court in the case of **Laxmikant Revchand Bhojwani & anr. vs. Pratapsingh Mohansingh Pardeshi (1995) 6 SCC 576,** in para 9, before considering rival submissions, wherein following observations were made:

> . " Before parting with this judgment, we would like to say that the High Court was not justified in extending its jurisdiction under Article 227 of the Constitution of

> India. The Act is a special legislation governing landlord-tenant relationship and disputes. The legislature has, in its wisdom, not provided second appeal or revision to the High Court. The object is to give finality to the decision of the appellate authority. The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes."

13. Bearing in mind the above observations of the Apex Court and considering concurrent finding of fact recorded by the Courts below, it is very difficult to reach to the conclusion that the impugned order is a perverse order. Cogent reasons are given by the lower appellate Court while confirming the findings of fact recorded by the trial Court on each and every issue raised in the appeal. The lower appellate Court appreciated oral evidence and recorded findings of fact and affirmed the findings of facts recorded by the trial Court. No case is made out either in the petition or during the course of hearing to demonstrate that any piece of evidence was not taken into account by the Courts below or that any piece of evidence was misconstrued by the lower appellate Court.

14. In the above view of the matter, petition is without any substance. The same is liable to be

dismissed.

15. In the result, petition is dismissed with no order as to costs.

16. At this stage,learned Counsel for the petitioner prays for 8 weeks time to approach higher Court. Learned Counsel for the respondent has no objection. Accordingly, petitioner is granted 8 weeks time to approach higher Court, on filing usual undertaking in this Court within one week, to the effect that in the event he fails in the higher Court, he will vacate the suit premises and hand over vacant and peaceful possession of the suit premises to the respondent without any excuse or demure, and that he shall not create any third party interest in respect of the suit premises. Undertaking shall be filed by all occupants of the premises.

(V.C.DAGA,J.)